

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Securities and Exchange Commission,	§	
	§	
Plaintiff,	§	
Vs.	§	CIVIL ACTION NO. H-04-2799
	§	
Carl R. Rose, Marvin M. Barnwell, Stacey	§	
J. Blake, George J. Cannan, Sr., George J.	§	
Cannan, Jr., Earl Shawn Casias,	§	
Lawrence A. Clasby, Hector J. Garcia,	§	
David A. Keener, Charles A. Leaver,	§	
Mark K. Menzel, Frank H. Moss, and	§	
Harris D. Ballow,	§	
	§	
Defendants.	§	

MEMORANDUM AND ORDER

This is an action for securities fraud arising from Defendants’ alleged manipulation of the stock prices of two publicly held companies. Defendants George J. Cannan, Sr. and George J. Cannan, Jr. (“the Cannans”) have filed a motion to dismiss the Complaint as against the Cannans for failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6), and, subject thereto, an Answer to the Complaint. The Cannans’ motion and Answer was not properly served upon the Cannans’ codefendant, Harris D. Ballow. *See* Fed. R. Civ. P. 5(a) (requiring a party to serve all other parties with copies of all written filings other than *ex parte* filings).

The certificate of service attached to the Cannans’ motion and Answer reflects that the Cannans attempted to serve it upon Ballow by serving a copy upon attorney Patrick Lanier. Lanier was ordered by the Court to withdraw as Ballow’s attorney on January 5, 2005, more than two months before the Cannans’ motion and Answer was filed. Because Lanier was no longer Ballow’s attorney at the time of attempted service,

the Cannans have not satisfied the requirement of Rule 5(a). Their motion and Answer, Docket No. 79, is therefore **DENIED** without prejudice to refiling.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 28th day of September, 2005.

A handwritten signature in dark ink, appearing to read "Keith P. Ellison", written in a cursive style.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

**TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES
THIS ORDER SHALL FORWARD A COPY OF IT TO EVERY
OTHER PARTY AND AFFECTED NON-PARTY EVEN THOUGH
THEY MAY HAVE BEEN SENT ONE BY THE COURT.**